IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2007

THE HONOURABLE MR.JUSTICE D.MURUGESAN
AND
THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

W.A.NO.773 OF 2003

1.The Chairman,
Tamil Nadu Electricity Board
800 Anna Salai, Chennai.

2.The Chief Engineer/Personnel
Tamil Nadu Electricity Board,
800 Anna Salai,
Chennai.

3.The Superintending Engineer,
Mettur Electricity Distribution Circle,
TNEB/Mettur Dam. : Appellants/REspondents

Vs.

Tmty.Arayee : Respondent/Writ Petitioner

This writ appeal is filed under Clause 15 Letters Patent against the order dated 05.06.2002 passed in W.P.No.11499 of 2001.

W.P.No. 11499 of 2001: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus call for the records which related to the passing of the impugned order dated 22.12.200 made in letter No. 990789/625/G.9/G.92/ 98/-6 and quash the same and consequently; direct he respondents herein to consider for grant of compassionate appointment to the candidature of the petitioner's daughter viz., Smt. R. Saraswathi on the basis of the G.O.M.s No.1551 Labour & Employment dated 16.7.1993 and board proceedings of the respondent dated 2.11.98 and 14.1.94.

For Appellants :Mr.M.Vaidyanathan
For Respondent:Mrs.G.Thilagavathi

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JUDGMENT

(P.R.SHIVAKUMAR,J.)

This writ appeal under Clause 15 of the Letters Patent is directed against the order of the learned Single Judge dated 05.06.2006 passed in W.P.No.11499 of 2001.

2. Thirumathy Arayee, the respondent herein/writ petitioner had filed the above said writ petition praying for the issue of a writ of Certiorarified Mandamus calling for the records of the second appellant/second respondent relating to his order dated 22.12.2000 made in his letter No. 990786/625/G.9/G.92/98-6 and to quash the same and to issue consequential direction to the respondents to consider the compassionate appointment to Sri Saraswathi, the daughter of the respondent/writ petitioner on the basis of G.O.Ms.No.155 Labour & Employment Department dated 16.07.1993 and the Board proceedings of the first appellant/first respondent dated 02.11.1993 and 14.11.1994. After hearing both sides, the learned Single Judge, by order dated 05.06.2002, allowed the writ petition, quashed the above said impugned order of the second appellant/second respondent and directed the appellants to provide appointment to the above said Saraswathi on compassionate ground within a period of 30 days from the date of receipt of a copy of that order. The said order of the learned Single Judge is put in issue before us in this writ appeal.

3. The facts leading to the filing of the Writ Appeal, in brief, are as follows:

i) Thiru P.Kandaswamy, husband of the respondent herein/writ petitioner died in harness on 25.05.1976 while he was working as a machin- man Grade III in Mettur Workshop, in Mettur Electricity System of the Tamil Nadu Electricity Board, leaving behind him four persons including the respondent/writ petitioner as his legal heirs. They are:

1.Arayee -Wife (respondent herein/writ petitioner)
2.Palaniappan - Son
3.Krishnan - Son
4.Saraswathi -Daughter

ii) All the three children of P.Kandaswamy, at the time of his death, were not married. Subsequent to the death of P.Kandaswamy his daughter, the above said Saraswathi got married in the year 1980. Palaniappan and Krishnan, both sons of P.Kandaswamy were employed in Tamil Nadu Electricity Board even during the life time of P.Kandaswamy. Long after the death of Kandaswamy, they got married in

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the years 1985 and 1988 respectively. While so, the Government of Tamil Nadu passed an order in G.O.Ms.No.155 Labour and Employment Department dated 16.07.1993 issuing certain clarifications in respect of the scheme providing appointment on compassionate grounds to the dependents of the employees dying in harness, by providing an explanation to the term 'indigent circumstances'. In addition to the explanation provided to the above said term, a further clarification had also been made to the effect that married daughter deserted by her husband and living with the deceased Government servant may also be considered for compassionate appointment if the widow of the deceased Government servant gives her consent in writing. The said Government Order has been adopted by Tamil Nadu Electricity Board and necessary orders, in this regard, were issued in Board proceedings BP(Ch) No.330 dated 02.11.1993.

iii) Based on the above said Government Order and the Board proceedings, the respondent/writ petitioner submitted a letter on 02.12.1994 and another letter on 07.12.1996, seeking employment for her daughter Saraswathy on compassionate grounds. It was alleged in the letters that her daughter had been deserted by her husband and hence, she was living with the respondent/writ petitioner. An application in the prescribed form was also submitted by the above said Saraswathi. The request of the respondent herein/writ petitioner was considered and rejected by the Superintending Engineer, Mettur Electricity Distribution Circle, Mettur Dam, who is the third appellant herein, in his letter No.044598/590/Adm.2(2)/F/DE/98, dated 19.11.1998. The same was challenged in W.P.No.17306 of 1999 which came to be allowed on 03.11.2000. The said order of the third appellant herein was thereby quashed and the appellants herein were directed to consider afresh the request of the respondent/writ petitioner seeking employment for her daughter Saraswathi on compassionate grounds in the light of various rules and regulations for making appointments on compassionate grounds. Pursuant to the directions issued by this Court, in the order dated 03.11.2000 made in W.P.No.17306 of 1999, a further representation was made on 18.11.2000 by the respondent herein/writ petitioner. After consideration, the request of the respondent herein/writ petitioner was rejected on 22.12.2000 by the second appellant/second respondent by a speaking order assigning reasons for the rejection. The same was challenged before the learned Single Judge of this Court in W.P.No.11499 of 2001.

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iv) The learned Single Judge, after hearing both sides, took the view that the respondent/writ petitioner was entitled to seek appointment on compassionate grounds for her daughter Saraswathy; that the reasons assigned by the second appellant/second respondent

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for the rejection of the writ petitioner's claim could not be sustained and that the appellants/respondents should have at east given the petitioner's daughter a job like "Sweeper" if she was not possessed of any qualification for being appointed to a cadre post. The learned Single Judge quashed the order impugned in the writ petition and directed the appellants herein/respondents to provide employment to the daughter of the respondent/writ petitioner on compassionate grounds within 30 days from that date of receipt of a copy of the said order passed in the writ petition. The correctness of the said order of the learned Single Judge dated 05.06.2002, made in W.P.No.11499 of 2001 is put in issue in this writ appeal.

4. We have heard the submissions made by Mr.M.Vaidyanathan, learned counsel appearing for the appellants and also by Mrs.G.Thilagavathi, learned counsel appearing for the respondent.

5. Advancing arguments on behalf of the appellants, Mr.M.Vaidyanathan, learned counsel would submit that the order of the learned Single Judge is contrary to law and hence liable to be set aside; that the learned Single Judge failed to note that the scheme of compassionate appointment is an exception to the regular mode of appointment and hence any body seeking compassionate appointment should bring his/her case strictly within the frame work of the Scheme; that the learned Single Judge failed to consider repeated pronouncement of the Honourable Supreme Court in this regard that no body can claim to have a right to get appointment on compassionate ground; that any claim for compassionate appointment should be considered strictly in accordance with the Rules framed and that, had the learned Single Judge properly applied the principle of law enunciated by the Honourable Supreme Court in this regard to the facts of this case, the claim of the respondent/writ petitioner would have been rejected. The learned counsel would contend further that the direction to provide employment to the daughter of the respondent/writ petitioner at least as a Sweeper, if she was found not educationally qualified and fit to be appointed to any cadre post, is unsustainable as the Rules do not provide for such an accommodation to a daughter, even though such relaxation is possible in case of the widow of the Board employee.

6. As an answer to the above submission made on behalf of the appellants, the learned counsel appearing for the respondent would submit that the relaxation provided regarding educational qualification in case of widow can very well be extended to the other dependents of the deceased government servant(board servant in this case), especially to the daughter of the Government Servant who has deserted by her husband; that hence the challenge made to the order

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of the learned Single Judge directing the appellants to offer employment on compassionate grounds to the daughter of the respondent/writ petitioner cannot be countenanced and that the writ appeal should be dismissed with costs confirming the order of the learned Single Judge.

7. This Court has given its anxious consideration to the above said submissions made on either side.

8. The application of the respondent herein/writ petitioner seeking appointment for her daughter Saraswathi on compassionate grounds was rejected at the first instance by the third appellant/third respondent by his letter dated 19.11.1998 in Lr.No.044598/590/Adm2(2)/F.DE/98 dated.19.11.98. The said order was a non-speaking order containing a single sentence as follows;

> "As directed by the Board I am to inform you that your request for employment assistance to your daughter in Electricity Board is not feasible of compliance."

The said order was successfully challenged before this Court in W.P.No.17306 of 1999. A learned Single Judge of this Court allowed the writ petition and set aside the order dated 19.11.1998 on the sole ground that the order was a non-speaking order as no reason was assigned and that the authorities/appellants herein had not applied their mind to the factual position. It is pertinent to note that the learned Single Judge had not issued any positive direction in W.P.No.17306 of 1999 to issue an appointment order to the daughter of the respondent/writ petitioner on compassionate grounds. On the other hand a direction had been issued to the appellants herein to consider afresh the application of the respondent/writ petitioner for providing employment to her daughter Saraswathi on compassionate ground. The relevant portion of the order found in paragraphs 4 and 5 is reproduced for the sake of convenience:

> "4. It is clear that the respondents have not taken note of all the circumstances and the various rules relaxing in appointment on compassionate grounds. The petitioner has sought appointment for her deserted daughter who would be eligible for being considered for appointment on compassionate grounds subject to satisfying certain requirements. It is alleged by the petitioner that those requirements are indeed satisfied in the case of her daughter. Apparently the authorities have not applied their mind to the factual position.
>
> 5. Consequently, the order impugned is quashed and there will be a direction to the respondents to consider afresh the

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application by the petitioner for appointment of her daughter Saraswathi on compassionate grounds in the light of the discussion above and in the light of the relevant rules. This exercise will have to be completed within a period of four months from the date of receipt or production of a copy of the order in the writ petition. The writ petition is disposed of accordingly."

9. According to the submissions made by the learned counsel for the appellants, the above said order of this Court directing fresh consideration of the application made by the respondent/writ petitioner seeking employment for her daughter Saraswathi on compassionate grounds has been fully complied with in passing the order dated 22.12.2000, which is impugned in the instant case and the learned Single Judge proceeded on an erroneous assumption that in the earlier writ petition this Court had held that the daughter of the respondent herein/writ petitioner entitled to get appointment on compassionate grounds and that a positive direction to such an effect had been issued. This Court is able to find substance in the said submission made by the counsel on behalf of the appellants.

10. The learned Single Judge in his order dated 5.6.2002 passed in W.P.No.11499 of 2001, which is impugned in this writ appeal. has framed the point for consideration as follows:

"Whether the earlier direction issued by the Court as per order dated 03.11.2000 in W.P.No.17306 of 1999 has been properly complied with by the second respondent as per the impugned order dated 22.12.2000?"

The said question happens to be the only point framed by the learned Single Judge for consideration in the writ petition. After framing the said point for consideration, the learned Single Judge has observed that this Court, in its earlier order dated 3.11.2000 made in W.P.No.17306 of 1999, had directed that the daughter of the respondent herein/writ petitioner should be fixed in some post suitable for her educational and other qualifications and that without such avenues being open for the management, this Court would not have directed the appellants herein to comply with the request of the respondent herein/writ petitioner. Pragraph 10 of the impugned order of the learned Single Judge runs as follows:

"10. Coming to the 2nd ground on which the 2nd respondent declined to offer any job to the petitioner's daughter on ground that she was only a 5th standard discontinued candidate and is not eligible to be given any employment in any category in the Board is concerned, the earlier direction of this Court dated 3.11.2000 made in W.P.No.17306 of 1999 is that the

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petitioner's daughter could be fixed in some post suitable for her educational and other qualifications and without such avenues being open for the respondent management, this Court would not have directed the respondents to comply with the request of the petitioner and therefore since the said order dated 03.11.2000 made by this Court in W.P.No.17306 of 1999 is on a overall consideration of the facts and circumstances of the case and further in view of the fact that the G.O.Ms.No.155 Labour and Employment Department dated 16.07.1993 is clear to the effect that the daughter of the deceased Government servant deserted by the husband is living with the family of the deceased Government servant and that she is eligible for being provided with a job and if such dependents of the deceased Government servant are not educationally qualified or eligible for appointment, they could be given a job like Sweeper, which aspect has not at all been taken into consideration by the respondents and the rejection of the request of the petitioner seeking a suitable job for her deserted daughter is certainly irregular and not in adherence with the tune or tenor the order passed by this Court earlier. Therefore, the respondents are not at all right in rejecting the petitioner's request on ground that there is no post available for the petitioner's daughter being fixed suitably to her eligibility and qualifications. "

11. The learned Single Judge has made an observation that the order passed in W.P.No.17306 of 1999 was on an overall consideration of the facts and circumstances of the case and that the order dated 22.12.2000 was irregular and not in adherence with the tune or tenor of the order passed in the earlier writ petition. This Court is convinced with the submission made by the learned counsel appearing for the appellant that in fact no such positive direction had been issued by this Court in its order dated 03.11.1999 made in W.P.No.17306 of 1999 and that the learned Single Judge proceeded on an erroneous assumption that a positive direction had been issued for providing suitable job to the daughter of the respondent/writ petitioner. We are of the considered view that the learned Single Judge should not have narrowed down the issue by assuming that the entitlement of the respondent/writ petitioner to get an appointment to her daughter on compassionate ground had already been upheld by the Court in the earlier writ petitioner. Instead of treating the issue as a closed one, the learned Single Judge should have considered the question on its own merit. Thus it is quite patent that the order of the learned Single Judge suffers from the infirmity pointed out supra. The very procedure adopted by the learned Single Judge in issuing a direction based on the above said observation

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without going into the merits of the case is, no doubt, infirm and defective.

12. It is true that the learned Single Judge has issued a direction for providing appointment to the daughter of the respondent herein/writ petitioner on the wrong assumption that her entitlement for seeking a job for her daughter on compassionate grounds had already been upheld in the former writ petition. But the same alone will not be enough to straight away set aside the order of the learned Single Judge and dismiss the writ petition. We have to consider the plea made by the respondent/writ petitioner seeking appointment for her daughter on compassionate grounds on its own merits. Let us now consider the plea made in the writ petition to find out whether the writ petitioner is entitled to the relief sough for, so as to sustain the order of the learned Single Judge.

13. The impugned order of the second appellant dated 22.12.2000 contains two gounds for the rejection of the claim of the respondent/writ petitioner seeking employment for her daughter Saraswathi on compassionate grounds. They are:

> 1)At the time of the death of the board employee P.Kandasamy, the family was not in indigent circumstances as the two sons of the deceased employee were employed in Tamil Nadu Electricity Board even on the date of death of the deceased board employee; and
>
> (2) The daughter of the respondent herein namely Saraswathi was not educationally qualified to be given employment in any category in the board as she had not even completed fifth standard.

Out of the two reasons, assigned by the second appellant/second respondent in his impugned order, the second ground is not a sound one. The scheme of compassionate appointment is made for helping the members of the family of the Government/Board servant who dies in harness, to come out of the indigent circumstances in which they are placed. The fact that the members of the family are illiterate will be one of the factors showing the indigent circumstances in which the family is placed. If at all rules and regulations do not provide for such relaxation regarding educational or other qualifications of any one of such members of the family for appointment on compassionate grounds, then the appellants would be justified in declining to give appointment to the daughter of the respondent/writ petitioner on the ground that she was not educationally qualified and fit to be appointed in any one of the cadre posts. But in para 5 of the G.O.Ms.No.155 Labour & Employment Department dated16.07.1993 which has been adopted by the board proceedings dated 02.11.93, it has been provided that if the widow of the employee is educationally not

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qualified or not eligible for appointment to a cadre post, she could be given a job like Sweeper. In the very same paragraph it has also been provided that married daughter who has been deserted by her husband and the widowed or divorced daughter living in the family of the deceased Board servant may also be considered if the widow of the deceased employee gives her consent in writing. A conjoint reading of both the clauses will show that the divorced or deserted or widowed daughter of the deceased employee should be treated on par with the widow of the deceased employee, provided the widow of the deceased employee gives her consent in writing. In this case, the respondent herein/writ petitioner has given her consent in writing for giving employment to her daughter on compassionate grounds. Hence the rejection of the application seeking compassionate appointment for Saraswathi, the daughter of the respondent herein/writ petitioner, on the ground that she was not educationally qualified to be appointed in any one of the posts in the Tamil Nadu Electricity Board is quite erroneous and hence, cannot be sustained.

14. On the other hand, so far as the first reason assigned in the impugned order is concerned, we are of the considered view that the same has to be sustained. Compassionate appointments are exceptions to the regular mode of appointment. As such, those who seek compassionate appointment cannot claim it as if there is a vested right. Appointment on the compassionate grounds is only an exception to the regular mode of appointment and hence the same should be made strictly in accordance with the rules and regulations framed for that purpose.

In 1994 (2) SCC 718 (LIFE INSURANCE CORPORATION OF INDIA v. ASHA RAMACHANDRA AMBEKAR & ANR), the Honourable Supreme Court has held that Courts cannot direct appointments on compassionate grounds dehors the provisions of the scheme in force governed by rules/regulations/instructions.

In 2002(7) SCC 83 (UNION OF INDIA v. JOGINDER SHARMA), the Honourable Supreme Court has held as follows;

> "Compassionate appointment is intended to enable the family of the deceased employee to tide over the sudden crisis resulting due to the death of the sole breadwinner, who dies leaving the family in penury and without sufficient means of livelihood."

In (2003) 7 SCC 704 (STATE OF HARAYANA AND ANOTHER v. ANKUR GUPTA), the Honourable Supreme Court has held as follows:

> "It need not be pointed out that the claim of the person concerned for appointment on compassionate ground is based on the premise that he was dependent on the deceased employee. Strictly, this claim cannot be upheld on the touchstone of

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Article 14 and 16 of the Constitution of India. Appointment on compassionate ground cannot be claimed as a matter of right."

15. Applying the above said principles enunciated in the above said judgments of the Honourable Supreme Court to the facts and circumstances of the case, we are of the considered view that the respondent's claim for appointment on compassionate grounds to her daughter cannot be sustained and that her claim has been rightly rejected by the appellants/respondents. Admittedly the deceased board employee, P.Kandasamy died in the year 1976. Even before his death, his two sons Palaniappan and Krishnan were employed in Tamil Nadu Electricity Board. Palaniappan was employed as Fitter Grade I in the Mettur Electricity Circle and Krishnan was employed as Assistant in Mettur Electricity Disribution Cirlce. On the date of death of P.Kandasamy, both the sons were employed and were earning considerably. After a lapse of four years from the date of death of P.Kandasamy, his daughter Saraswathi was given in marriage to one Subramani. Admittedly, Palaniappan and Krishnan were married in the years 1985 and 1988 respectively. According to the avements found in the affidavit filed in support of the writ petition, the first son got married in the year 1985 and the second son got married in the year 1988 and only thereafter they started living separately. For more than 9 years from the date of death of Kandasamy they were living as one family.

16. It is obvious that the respondent/writ petitioner sought appointment for her daughter on compassionate grounds only after the G.O.155 dated 16.07.1993 and the consequential Board proceedings dated 02.11.1993 and 14.11.1994 were passed. The claim has been made based on the averment that the sons of the respondent/writ petitioner are living separately and that the respondent/writ petitioner and her daughter, without any independent source of income, are living separately. The indigent circumstances of the family shall be decided with reference to the date of death of the deceased employee. Application for compassionate appointment should have been made within a reasonable time and within the time prescribed in the regulations. In this case the scheme of appointment was in force from 1978. The same underwent various charges in due course of time. But all along it was maintained that appointment on compassionate grounds could be made provided the family was put in indigent circumstances due to the death of Government/Board employee. In 1993 by G.O. G.O.155, dated 16.07.1993 and the consequential Board proceedings cited above, an explanation to the expression "indigent circumstances" has been provided. In view of such explanation, it was also stipulated that applications in the case of employees who

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died prior to the said G.O. and Board proceedings could be submitted within three years from the date of Board proceedings.

17. Now it has been held in several cases that the application made for compassionate appointment after several years from the date of death of the employees should be rejected. In (1997) 8 SCC 85 (HARAYANA STATE ELECRICTITY BOARD AND ANOTHER v. HAKIM SINGH) the Honourable Supreme Court has held that the request for compassionate appointment after 14 years from the date of death of the employee was held to be rightly rejected even though the son of the deceased employee was minor and the request was made within three years after he attained majority. Similarly in 1998(2) SCC 412, (STATE OF U.P. AND OTHERS v. PARAS NATH) the Honourable Supreme Court has held the application for compassionate appointment made after 7 years of the death of the employee was rightly rejected, even though the son was a minor at the time of death of the employee.

18. All the judgments of the Honourable Supreme Court point out one single proposition that there is no vested right in the legal heirs of the deceased Government/Board employee to seek an appointment on compassionate grounds; that the appointment on compassionate grounds should be made strictly in accordance with the rules and regulations providing for such appointment; that to avail the benefit of compassionate appointment, it should be proved that the family is in penury condition; that the penury condition of the family should be proved with reference to a reasonable period immediately after the death of the Government/Board employee; that belated application seeking appointment on compassionate grounds would give rise to a presumption that the family was not in a penury condition and that, belated application seeking appointment on compassionate grounds is liable to be rejected for that reason alone. If these principles repeatedly declared in the above said judgments are applied to the facts of the present case, the only conclusion that is possible is that the family of the respondent/writ petitioner was not in indigent circumstances for about 9 years from the date of death of the deceased Board employee in the year 1976 i.e. till 1985 when the first son of the deceased employee got married. Even thereafter till 1988, it cannot be stated that the family was in indigent circumstances as the second son admittedly got married only in 1988.

19. Thus it is quite obvious that the family did not need any support from the Board by providing compassionate appointment. It was only in the year 1994, the respondent/writ petitioner submitted an application seeking employment for her daughter Saraswathi on compassionate grounds. If at all the family needed any such

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assistance after the death of Kandasamy, his wife (the respondent herein/writ petitioner) could have asked for employment for her on compassionate grounds. She need not have waited for 18 long years to seek employment for her daughter on compassionate grounds. It is not as if the scheme of compassionate appointment for the dependents of the employee dying hardness, based on the indigent circumstances in which the family of such employee is placed, was introduced for the first time in 1994. Right from 1978, the scheme providing compassionate appointment was there in existence. Initially as per Board proceedings M.S.No.585, dated 20.04.1978, the scheme was introduced for providing employment to the dependents of the deceased employees, if the death was due to accident in the course of discharge of his duties. In 1979 by the Board proceeding M.S.No.330 dated 22.02.1979, the benefit of compassionate appointment was extended to the dependents of the employees of the Board who died in hardness while in service due to natural causes also. Thereafter, several modifications regarding qualification, age limit and other aspects were made. In 1984 the scheme was extended to cases of retirement on medical grounds also.

20. The admitted position is that appointment on compassionate grounds is to be made only when the family is in indigent circumstances. As there was no clear cut explanation for the expression "indigent circumstances", the Government passed an order G.O.Ms.No.155 Labour and Employment Department, dated 16.07.1993 providing an explanation to the said term. The same was incorporated by the Electricity Board in Board proceedings permanent No.BP(Ch) No.330, Administrative Branch, dated 02.11.1993. An explanation to the expression "indigent circumstances" was provided as follows:

> "II – It is considered that if a member of the family is already in employment and supports the family, then the restriction that if there is already any earning member of the family of the Government service, who died in hardness the other dependents of the deceased Government servant will not be eligible for compassionate appointment may be applied. When a dependent of the family is employed, the factors to be ascertained are – Whether he is regularly employed? Is he actually supporting the family?
>
> If that person was employed even before the death of the Government servant, and was living separately without extending any help to the family, then the case of other eligible can dependent will be considered"

21. It is the admitted case of the respondent that both her sons were employed even during the life time of her husband Kandasamy, the deceased Board employee. It is not her case that they were living

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separately and did not extend any help to the family during the life time of the deceased Board employee. It is quite obvious from the admitted facts that the sons were living with the deceased Board employee and even after the death of the Board employee, they continued to live with the respondent/writ petitioner till 1985 and 1988 respectively. It is also patent that both of them were supporting the family and in fact the marriage of Saraswathi, the daughter of the respondent/writ petitioner was performed when the sons of the writ petitioner were living with her and extending help to the family. The said facts are enough to apply the above said exclusion clause found in the explanation provided for the expression "indigent circumstances".

22. Reliance was made by the respondent/writ petitioner on BP. (VFA) NO.46, dated 13.10.1995 that the application could be made within three years from the date of the said Board proceedings and in fact her first application was made in 1994 would show that she was eligible to seek employment assistance for her daughter on compassionate grounds. The mere fact that the application for seeking employment assistance on compassionate grounds was made within three years from the date of the said Board proceedings will not be enough to hold that the respondent/writ petitioner was entitled to get such employment assistance for her daughter, unless she proves that the family was left in indigent circumstances due to the death of the Board employee. As pointed out supra, the family could not be in indigent circumstances as two of her sons were employed even before the date of death of the deceased Board employee and even as per the averments found in the affidavit filed in support of the writ petition, they were living with the respondent/writ petitioner supporting the family after the death of the Board employee till 1985 and 1988 respectively.

23. Taking into consideration all these factors, we do come to the conclusion that the respondent/writ petitioner has not proved that her family lived in indigent circumstances due to the death of her husband Kandasamy, the deceased Board employee and that the explanation providing for exclusion clause to the effect "if any one of the deceased Board employee was already employed and extending help to the family then the other dependents of the deceased employee will not be eligible for compassionate appointment" clearly applies to the case of the respondent/writ petitioner and that hence, she is not entitled to the employment assistance on compassionate grounds.

24. In view of the forgoing discussions, we come to the conclusion that the order passed by the learned Single Judge has got to be set aside and that Writ Petition No.11499 of 2001 filed by the

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respondent herein/writ petitioner deserves to be dismissed. Accordingly, the Writ Appeal is allowed and the order of the learned Singe Judge dated 05.06.2002 passed in W.P.NO.11499 of 2001 is set aside. Resultantly the writ petition shall stand dismissed. There shall be no order as to payment of costs.

/SML

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1.The Chairman,
Tamil Nadu Electricity Board
800 Anna Salai,
Chennai.

2.The Chief Engineer/Personnel
Tamil Nadu Electricity Board,
800 Anna Salai,
Chennai.

3.The Superintending Engineer,
Mettur Electricity Distribution Circle,
TNEB/Mettur Dam.

- One cc to Mr. M. Vaidyanahan, Advocate SR 76044
- One cc to M/s G. Thilakavathy, Advocate SR 75722

CU (co)
sg 07/01/08

judgment made in
W.A.NO.773 OF 2003
Delivered on:20.12.2007

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